down till the time of the fire which took place on 8th March, 1955, the appellant's liabilities consistently exceeded his assets. Again, as has been pointed out, his business was that of an oil miller. Yet on three occasions in February, 1955, he bought forward some seventy-five tons of rubber at prices which dropped from ten to sixteen cents a pound before the delivery date and he thereby incurred losses of some $14,000. Clearly those losses contributed *pro tanto* to his bankruptcy and clearly in view of his financial position at the time and in view of the fact that such dealings in rubber had nothing to do with his normal business the transactions which led to these losses could only be described as rash speculations.

Appeal allowed in part.

Solicitors: *Lim, Lim & Oon.*

THE NATIONAL UNION OF PLANTATION WORKERS v. K. ANNAMALAI

[C.A. (Thomson C.J., Smith and Shepherd JJ.) June 5, 1958]

[K.L. — F.M. Civil Appeal No. 11 of 1957]

Trade Union — Libel — Whether a trade union can be sued for libel — Trade Union Enactment, 1940, s.21 — Statutes — Construction of.

This appeal raised the question of the liability of a registered trade union to be sued for libel. The appellant, a registered trade union, was sued as the publisher and owner of a magazine entitled "Sangamani". The respondent was the Hon. Secretary of another trade union. It was alleged by the respondent that in the issue of the "Sangamani" dated June 1, 1956, there were published certain defamatory statements relating to the respondent. After some preliminary correspondence the respondent commenced proceedings in libel and cited as defendants the Editor of the "Sangamani" and the appellant union as "publishers and owners" of that periodical. The appellant thereupon took out a summons to have themselves struck out as defendants on the ground that the action against them was not competent by reason of section 21 of the Trade Unions Enactment, 1940. This application was dismissed by Sutherland J., and against that decision the appellant appealed.

Held: (Thomson C.J. and Smith J., Shepherd J. dissenting) a registered trade union in the Federation cannot be sued for libel.

Observations of Thomson C.J. on the trade union law in the Federation of Malaya.

Cases referred to:—

(1) *The Taff Vale Rly. Co. v. The Amalgamated Society of Rly. Servants,* (1901) A.C. 426.

(2) *Bonsor v. Musicians' Union,* (1956) A.C. 104.

(3) *Ideal Films Ltd. v. Richards,* (1927) 1 K.B. 374.

(4) *Citizens' Life Assn. Co. Ltd. v. Brown,* (1904) A.C. 423, 426.

(5) *Vacher & Sons Ltd. v. London Society of Compositors,* (1913) A.C. 107.

(6) *Rigby v. Connol,* 14 Ch.D. 489.

(7) *Linaker v. Pilcher,* 84 T.L.R. 421.

(8) *Osborne v. Amalgamated Society of Rly. Servants,* (1909) 1 Ch. 163, 193.

(9) *Casey v. Arnott,* 2 C.P.D. 24.

(10) *Agnew v. Usher,* 14 Q.B.D. 78.

(11) *Kaye v. Sutherland,* 20 Q.B.D. 147.

(12) *Tassell v. Hallen,* (1892) 1 Q.B. 321.

(13) *Attorney-General v. Sillem* (1863), 2 H. & C. 431, 515.

(14) *Cargo ex Argos,* (1873) L.R. 5 P.C. 134.

(15) *Shinwell v. National Sailors' & Firemen's Union,* (1913) *The Times,* June 16.

(16) *National Union of General & Municipal Workers v. Gillian & Ors.,* (1946) 1 K.B. 81.

(17) *Wigram v. Fryer,* (1887) 36 Ch.D. 99.

(18) *Vacher & Sons Ltd. v. London Society of Compositors,* (1912) 3 K.B. 547.

(19) *Longdon-Griffiths v. Smith,* (1950) 2 All E.R. 662.

(20) *Spenser's Case,* 5 Co. Rep. 16b.

(21) *Fleetwood v. Hull,* 23 Q.B.D. 33.

(22) *Willesford v. Watson,* (1873) 42 L.J. (N.S.) 447.

(23) *Drennan v. Beechey & Ors., Trustees of the Transport & General Workers' Union and Magill,* (1934) N.I. 74.

(24) *Dixon v. Bell,* (1816) 5 M. & S. 198.

(25) *Canada Sugar Refining Co. v. R.,* (1898) A.C. 735.

COURT OF APPEAL.

Miss P. G. Lim for the appellant.

K. L. Devaser for the respondent.

Cur. Adv. Vult.

Thomson C.J.: — This appeal raises the question of the liability of a registered trade union to be sued for libel.

The appellant is the National Union of Plantation Workers which I think is agreed to be a registered trade union and it is sued as the publisher and owner of a magazine entitled "Sangamani". The respondent is the Honorary Secretary of another body known as the Malayan Estate Workers' Union. It is alleged, and for the purposes of the present proceedings it must be assumed, that in the issue of the "Sangamani" dated 1st June, 1956, there were

published certain defamatory statements relating to the respondent. After some preliminary correspondence the respondent commenced proceedings in libel and cited as defendants the Editor of the "Sangamani" and the appellant union as "publishers and owners" of that periodical.

The appellant union thereupon took out a summons to have themselves struck out as defendants on the ground that the action against them was not competent by reason of section 21 of the Trade Unions Enactment, 1940. This application was dismissed by Sutherland, J., and against that decision the appellant has now appealed.

The law relating to trade unions in this country is contained in the Trade Unions Enactment, 1940, which is clearly based on, though it does not follow in detail, the provisions of the United Kingdom Trade Union Acts. Section 21 of that Enactment, which corresponds to section 4 of the Trade Disputes Act, 1906, reads as follows:—

"21(1). A suit against a registered trade union or against any members or officers thereof on behalf of themselves and all other members of the trade union in respect of any tortious act ~~not~~ alleged to have been committed by or on behalf of the trade union shall not be entertained by any Court.

(2). Nothing in this section shall affect the liability of a trade union or any officer thereof to be sued in any Court touching or concerning the property or rights of a trade union, except in respect of any tortious act committed by or on behalf of the trade union in contemplation or in furtherance of a trade dispute."

Before proceeding to a detailed consideration of that section it is important to observe that it does not create any liability on the part of trade unions. What it does do is to cut down and limit liabilities which arise and exist independently of it and which, but for its provisions, would be greater than they are.

These liabilities are the same as were the liabilities of trade unions under the law of England prior to the Trade Disputes Act, 1906. After the case of *The Taff Vale Railway Co. v. The Amalgamated Society of Railway Servants*[1] it was settled law that a trade union was an entity known to the law and could be sued *inter alia* for the tortious acts of its servants or agents (see *Bonsor v. Musicians' Union*[2]). Moreover, in the case of any unincorporated body whose property is vested in trustees the trustees as such can be joined as defendants in any proceedings where the plaintiff is seeking a remedy against the property (see *Ideal Films, Ltd. v. Richards*[3]).

As regards libel, therefore, the position, had section 21 not been enacted, would have been that a trade union could be sued for any libel published by its servants for which it would be liable.....on ordinary principles of agency" (see *Citizens' Life Assurance Co. Ltd. v. Brown*[4]). That is the liability which would exist were it not for section 21 and which section 21 has to some extent cut down and limited.

With great respect for the legislature I can only describe section 21 as a sort of forensic jumping jack. He starts with the liability of the trade union as it has been stated; then the section cuts it down by saying that no action in respect of any tortious act shall be entertained by any Court. Having imposed that prohibition the section then detracts from it by saying it is not to apply where the union is sued "touching or concerning" its "property or rights." Then having thus detracted from the prohibition it proceeds so to speak, to detract from the detraction by saying that the prohibition is not to be detracted from where the tortious act is committed in connection with a trade dispute.

The initial prohibition which is contained in sub-section (1) which follows the wording of section 4(1) of the Trade Disputes Act, 1906, is clear and unambiguous. Every Court is forbidden to entertain a suit against a registered trade union in respect of any tortious act committed by or on behalf of the union, and if any authority is necessary to support the proposition that this prohibition strikes at a suit based on the publication of a libel it is to be found in the case of *Vacher & Sons Ltd. v. London Society of Compositors*.[5]

In the present case there is no question of any connection with a trade dispute and the only question therefore which arises is whether in the present proceedings the union is being sued "touching or concerning" its "property or rights". If it is being so sued, then the case falls within sub-section (2) and sub-section (1) does not apply; if it is not being so sued then sub-section (1) does apply and the suit is prohibited.

For myself I do not propose to attempt any exhaustive exegesis of sub-section (2). As Lord Macnaghten said of this corresponding section of the English Act of 1906 "it is not easy to see the object of sub-section (2) of section 4 or to understand its precise meaning" (*Vacher & Sons, Ltd. v. London Society of Compositors, supra*, at p.119). I would, indeed, echo with respect but none the less emphatically the

suspicion expressed by Lord Moulton regarding the same section (*ibid* p. 132) that there may be some question of imperfect drafting. In the circumstances it would be otiose and probably in the event impossible to state the whole effect of the section, and I do not propose to attempt that task. All that is necessary and indeed all that is possible is to say whether, on the pleadings, the present proceedings are taken outside the scope of the prohibition contained in sub-section (1) by reason of being a suit which touches and concerns the property or rights of the union.

Before proceeding to that task it will be desirable to consider certain aspects of the law in England.

It is probably true to say that in England prior to the Trade Union Act, 1871, a trade union did not differ in any way from any other unincorporated voluntary association except that in so far as the contract between its members was in restraint of trade it was an unlawful association. The individual members had their individual rights and obligations but the union itself had no legal *persona*. It could not sue or be sued as such and it could not own property, although no doubt property could be conveyed to trustees for specified purposes.

The 1871 Act did not in terms constitute trade unions corporations known to the law nor did it in terms enable a trade union as such to sue or be sued. It forbade certain types of contract (section 4) but it provided (sections 2 and 3) that the purposes of trade unions were not by reason merely that they were in restraint of trade unlawful so as to render any member of the union liable to criminal prosecution or so as to render void or voidable any agreement or trust. The Act then provided (section 6) for optional registration. It provided (section 7) that any trade union which did become registered could hold or deal with limited amounts of real property. With regard to holding of property generally it provided (section 8) that all real and personal assets belonging to a registered union should be vested in trustees appointed in accordance with the provisions of the Act and section 9 provided that the trustees of a registered union:—

"are hereby empowered to bring or defend, or cause to be brought or defended, any action, suit, prosecution, or complaint in any Court of Law or equity touching or concerning the property, right, or claim to property of the trade union; and shall or may, in all cases concerning the real or personal property of such trade union, sue and be sued, plead and be impleaded, in any Court of Law or equity, in their proper names, without other description than the title of their office."

The objects of the Act were thus described in the following well-known passage of Jessel, M.R., in the case of *Rigby v. Connol*[6]:—

"That Act, no doubt, was passed primarily with a view to preventing the treasurers and secretaries and officers of these societies from robbing them; that was the chief object. It was discovered that some of these men, abusing the confidence reposed in them, took advantage of the law which made these societies illegal, by appropriating their funds and property to their own use. That, no doubt, was one of the principal objects, and therefore the Act was passed to get at these men. Another object was this: there was a great difficulty in suing and getting their property from third persons, and one object of the Act was to enable these societies to sue in respect of their property, and also to enable them to hold property, such as a house or office."

As was to be shown by the *Taff Vale* case, *supra*, there was nothing in the 1871 Act which prevented a registered trade union being sued in tort in its registered name in respect of acts of its servants and agents and it would seem to be clear that even had section 9 never been enacted and quite apart from the provisions of that section trustees in whom the property of the union was vested could have been joined as defendants to any such section. In the *Taff Vale* case Lord Lindley said (at p. 443):—

"it is in my opinion equally plain that if the trustees in whom the property of the society is legally vested were added as parties, an order could be made in the same action for the payment by them out of the funds of the society of all damages and costs for which the plaintiff might obtain judgment against the trade union."

That these observations by His Lordship are in no way dependent on the provisions of section 9 of the 1871 Act is clear from the case of *Ideal Films, Ltd. v. Richards, supra*. That was an action brought against an unincorporated association (not a trade union) for the hire of certain articles to which were joined as defendants certain persons in whom property belonging to the association was vested as trustees. Both Bankes, L.J., and Scrutton, L.J., were of the opinion that this could be done provided that it was made clear that no claims were made against the trustees personally and that the plaintiff was only seeking to get at the equitable interest of the other defendants in property in which the trustees had the legal interest.

On this view of section 9 it would seem that that section was largely procedural and related mainly to cases where trustees could be sued without the union itself being a necessary party.

It is only on this basis that any intelligible meaning can be given to section 4 of the Trade

Disputes Act, 1906, considered as a whole. It is generally agreed that the object of section 4 was to protect the funds of trade unions against the consequence of tortious acts committed by their members. It would clearly be to counteract this clear purpose as affected by sub-section (1) to turn round and say in sub-section (2) that although the union itself could not be sued an action could be brought against the trustees which, if successful would have a prejudicial effect upon the union's funds. The section as a whole, to my mind, is only intelligible on the assumption that the reference to section 9 of the 1871 Act in sub-section (2) infers that the legislature regarded section 9 of the 1871 Act in so far as it relates to actions for tort as relating only to a limited class of such actions. As was said by Lord Atkinson in *Vacher's* case, *supra* — at p. 124):—

"A proceeding against the trustees under section 9 of the Act of 1871 is in fact, if not in form, a proceeding in *rem* against the property of the trade union. In that sense it is an action against the union itself."

As regards the extent of that limited class of sections there is a great lack of definitive authority. It is true that in the case of *Linaker v. Pilcher*[7] where the trustees of a trade union were sued for a libel published in a newspaper of which the trustees were the publishers and owners Mathew, J., held that the trustees were liable. But, although it has never been expressly overruled, that case can probably no longer be regarded as good law. As was said by Farwell, L.J., that much justified master of trade union law, in the case of *Osborne v. Amalgamated Society of Railway Servants*[8]:—

"That case (*Linaker v. Pilcher*) was decided under somewhat unfortunate circumstances and cannot be regarded as correct. It was heard while the judgment in the case of *Taff Vale Ry. Co. v. Amalgamated Society of Railway Servants* was reversed in the Court of Appeal and before it was affirmed in the House of Lords, and the proposition that the trustees of the union could be sued for such a tort as libel of which not they but the trade union were guilty cannot stand, whatever might be the case if the tort were the result of the use of the union's property vested in them, so as to cause, for example, nuisance by obstructing ancient lights."

In all the circumstances the question of liability under the local law must be regarded as largely a question of construction and on that question I now proposed to express my views.

In the first place I would observe that section 21 is meaningless except on the assumption that tortious acts can be divided into two classes according as to whether or not suits based on them do or do not touch or concern the property or right of the union which is sued. Sub-section (1) applies to all actions for tort. Sub-section (2) must apply to less than all actions for tort for otherwise it would completely cancel out sub-section (1) except in cases connected with a trade dispute. This may have been the intention of the legislature but in the first place if it was so intended then it is surprising that the legislature did not say so in terms and in the second place it is a construction which is in conflict with the view of the House of Lords in *Vacher's* case, *supra*, where their Lordships strongly disapproved the attempt to take the words "in contemplation.....of a trade dispute" from sub-section (2) and read them with sub-section (1) of section 4 of the Trade Disputes Act so as to cut down the generality of the provisions contained in sub-section (1).

If it be accepted that section 21 postulates a dichotomy among suits for tort according as to whether they do or do not touch or concern the property or rights of the union then it clearly follows that by "property or rights" is meant not the sum total of the union's property or rights of every description but individual specific rights or items of property. My reason for saying so is that every action of any sort viewed *ex limine* touches or concerns in some way the property or rights of both litigants. If it were not so there would be no action. And in the event in every case the totality of the property and rights of each of the litigants must be to some extent increased or diminished. For example, as was said by Mathew, J., in the case of *Linaker v. Pilcher, supra* — p. 426):—

"An action that threatened the assets of the society by a claim for damages.....would be an action that touched and concerned the property of the society."

Then I would observe that the word "rights" must mean patrimonial or property rights. In that sense its use may be pleonastic. Nevertheless, I think it is so used not only from its close juxtaposition with the word "property" but again because it is difficult to imagine any action that has not something to do with "rights" in the widest sense, for after all rights and liabilities are co-relative terms. And again such an interpretation would nullify the provisions of sub-section (1).

Finally, I come to the question of whether an action for libel touches or concerns the property or rights of the union in the sense in which I have interpreted property and rights. In my opinion the answer is 'no'. It is clear that certain actions in tort as for example trespass, trover and detinue do touch or concern specific items of property which may

form their subject matter for in the event they will determine the extent of that property. Again certain actions such as nuisance and actions of the *Rylands and Fletcher* type touch and concern specific proprietary rights, because the right of action could not exist without some sort of ownership of the property concerned on the part of the defendant. Where, however, it is sought to establish vicarious liability for the act of an agent, and that is just what is sought to be established against the owner of a newspaper in which a libel is published, then it seems clear that the liability arises if at all from the relationship between principal and agent (see *Citizens' Life Assurance Co. Ltd. v. Brown — supra*) and to be entirely unconnected in law with the owner's property rights. It may well be that the existence of these property rights may as a matter of evidence help to make out the agency but as a matter of law it is the agency which creates the liability and not the facts from which it may or may not be inferred.

I would add that I find it difficult to draw any substantial distinction between a suit "touching or concerning" property and a suit "affecting" property and on the purely technical question of construction I find some support for the view I have taken in a number of English cases on the interpretation of R.S.C. Order XI rule 1(b) which provides for service out of the jurisdiction in the case of suits involving construction of any liability "affecting land".

In the case of *Casey v. Arnott*[9] it was held that a statement of the nature of slander of title was not something which affected land. "It was not the thing itself that was affected, but the minds of intending purchasers" (*per* Grove, J., at p. 25). And in the case of *Agnew v. Usher*[10] Lord Coleridge, C.J., said that "according to the ordinary rules of construction and legal phraseology" an action to obtain payment of rent was not one to enforce a "contract, obligation or liability affecting land." In the case of *Kaye v. Sutherland,*[11] on the other hand, Charles, J., was of the opinion that the custom of the country in Yorkshire was something which affected land held subject to it and Stephen, J., was clearly of the same opinion by reason of the analogy to be drawn between the custom of the country in Yorkshire and such customs as gavelkind or borough English. Finally in the case of *Tassell* v. *Hallen*[12] Lord Coleridge returned to the same point in relation to an action for breach of a covenant to repair contained in a lease. He considered his own decision in *Agnew v. Usher, supra,* and the decision in *Kaye v. Sutherland, supra* and came to the conclusion that a covenant to repair was a liability affecting land because it was something that ran with the land.

I would, therefore, allow the present appeal with costs and would only add that I express no opinion as to the justice or expedience of the law as it has been stated. It may be in the public interest that trade unions should be at liberty to libel individuals, possibly humble individuals, with impunity. Again that may not be in the public interest. The question is not one on which the Courts should express any view. It is a question for the Legislature. If the law is thought to be a good law no doubt it will remain. If it is thought to be a bad law no doubt it will be altered.

Smith J.: — I have had the benefit of reading the judgments of the learned Chief Justice and of my brother Shepherd. I am in agreement with the judgment of the learned Chief Justice and its reasoning.

It has been contended that if the views of the plaintiff are correct then the amendment of the law in 1948 was nugatory. It is a well established canon of interpretation that where the intention of a statute is not clear and unambiguous "the construction that produces the greatest harmony and the least inconsistency is that which ought to prevail". (*Attorney-General v. Sillem,*[13] quoted in *Craies'* Statute Law, 5th Edn. p. 88). There is considerable ambiguity in section 21 of the Trade Union Enactment, 1940. The words being ambiguous "it is necessary to adopt that construction which will give some effect to the words rather than that which will give none". (*per* Judicial Committee in *Cargo ex Argos,*[14] quoted in *Craies'* op. cit. p. 98). I am satisfied that the interpretation placed upon the sub-section by the learned Chief Justice avoids the manifest absurdity of treating the somewhat ambiguous amendment of 1948 as nugatory.

Our law on the point under consideration appears to me to be *in pari materia* with that of the United Kingdom. I have been unable to find any reported case since that of *Shinwell v. National Sailors' & Firemen's Union*[15] in which a trade union or its trustees have been sued for libel when there was no trade dispute. In *Shinwell's* case Lord Cullen in the Scottish Court of Session dismissed the action against the trade union and its trustees under section

4(1) of the U.K. 1906 Act. That decision appears never to have been queried.

The most recent U.K. case which has come to my notice concerning libel in a trade union publication is that of the *National Union of General and Municipal Workers v. Gillian and Others.*[16] In this case the National Union of General and Municipal Workers was libelled in a journal published by the Chemical Workers' Union. It is to be noted that the National Union did not sue the Chemical Workers' Union or its trustees but sued personally the General Secretary and another official of the Chemical Workers' Union who were responsible for the publication, although it was as Scott L.J. said at page 84 "in reality a battle between trade unions."

I would therefore allow the appeal with costs.

Shepherd J. — This is an appeal against the decision of the learned Judge at first instance who dismissed an application made by way of Summons in Chambers for the second defendant to be struck out on the ground that by virtue of section 21 sub-section (1) of the Trade Union Enactment, No. 11 of 1940 no action is competent against such a defendant. The whole of section 21 of the Trade Union Enactment, 1940 must be considered. It reads as follows:

> 21. (1). A suit against a registered trade union or officers thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union shall not be entertained by any Court.
>
> (2). Nothing in this section shall affect the liability of a trade union or any officer thereof to be sued in any Court touching or concerning the property or rights of a trade union, except in respect of any tortious act committed by or on behalf of the trade union in contemplation or in furtherance of a trade dispute.

The question which agitated the mind of the learned Judge was as to the intention of the legislature; and this was but natural since the intentions of the legislature are those to which it is presumed the Courts must give effect. He rightly said, however, that the Courts are bound by the language of this section. It is a matter for speculation whether it was the intention of the legislature to protect trade unions from liabilities for tort of any description however arising. It is a matter for speculation whether it was not the intention of the legislature to afford such protection only where tortious liability arose in connection with the furtherance of a trade dispute. Speculation of this sort is idle.

Viscount Haldane, Lord Chancellor in *Vacher's*[5] case at page 113 said as follows:

> "My Lords, we have heard, in the course of this case, suggestions as to the merits of the conflicting points of view and as to the reasonableness, in interpreting the language of Parliament in the Trade Disputes Act of 1906, of presuming that the Legislature was acting with one or other of these points of view in its mind. For my own part, I do not propose to speculate on what the motive of Parliament was. The topic is one on which Judges cannot profitably or properly enter. Their province is the very different one of construing the language in which the Legislature has finally expressed its conclusions, and if they undertake the other province which belongs to those who, in making the laws, have to endeavour to interpret the desire of the country, they are in danger of going astray in a labyrinth to the character of which they have no sufficient guide. In endeavouring to place the proper interpretation on the sections of the statute before this House sitting in its judicial capacity, I propose, therefore, to exclude consideration of everything excepting the state of the law as it was when the statute was passed, and the light to be got by reading it as a whole, before attempting to construe any particular section. Subject to this consideration, I think that the only safe course is to read the language of the statute in what seems to be its natural sense."

With great respect, I would adopt these words.

I would also quote, with respect, the words of North, J. in the case of *Wigram v. Fryer*[17]:

> "It is a very lamentable way of legislating, that one should be driven to get at the meaning of these Acts by removing difficulties (as far as can be done) by construction, rather than that the intention of the Legislature should be clearly expressed upon the face of the Act."

I cannot escape the conclusion that this is a badly drafted section.

The question this Court must consider is how to construe the provisions of the section in the context in which such provisions are found.

"Property" in my view, in this country's legislation, usually has the widest connotation; there is nothing in the present enactment to exclude such connotation. The word is not defined *qua* 'Property' in the Interpretation and General Clauses Ordinance, 1948; but both immovable and movable property are defined, the latter being defined as meaning "property of every description except immovable property as defined in this Ordinance." That being so, I see no reason to place any artificial restriction on the meaning of the word 'property' as employed in the section.

As if to confirm that the wide implication of the term is the correct one, I observe that Chapter VI of the Enactment headed "Property", by virtue of section 36, provides for the vesting of all property in trustees for the use and benefit of the union and its members and

employees, and, as if to make assurance doubly sure, the words "all property, movable or immovable", are employed. There can be little doubt that the property in a newspaper must come within the meaning of one of those designations and since the union and the members are to enjoy the use and benefit of the newspaper, it seems but reasonable that they should also suffer the responsibilities and liabilities flowing from an improper use of such property unless they fall within the exception regarding the furtherance of a trade dispute to which I have referred above.

The expression "any property", obviously carrying a wide connotation, is also used in section 24(4) being one of the sections in a preceding chapter (Chapter IV) which significantly has the title "Rights and Liabilities of Trade Unions". There is little doubt that the plaintiff/appellant seeks to proceed against the property of the union under and by virtue of this sub-section; hence it may as well be here set out in full:

"Execution for any money recovered from a trade union in civil proceedings may issue against any property belonging to or held in trust for the trade union other than the benevolent fund of a registered trade union."

In my view, a comparison of this section (section 24) with sections 8 and 9 of the Trade Unions Act, 1871, discloses significant variations; a reference to the extract from Lord Atkinson's judgment in *Vacher's* case, (which I am about to quote), will indicate what I mean. This explains the curious fact that the trustees were not joined as defendants. Another curious fact is that nowhere is it admitted or alleged in the pleadings that the appellants are a registered union. The proposition that they were out of Court before they began was not contended for but, in any event, I have ascertained from the Registrar of Trade Unions who, in another capacity, is an officer of the Supreme Court, that the union was registered under section 10 and issued with Certificate of Registration No. 530 under section 11 on 9th May, 1955.

In my judgment, the section taken as a whole means, on the face of it, that nothing contained therein is to be regarded as affecting the liability of a trade union or any officer thereof to be sued in respect of a liability in tort, (which of course, includes defamation) excepting in one case only, that is to say, excepting in the case where there has been a tortious act committed by or on behalf of the trade union in contemplation of or in furtherance of a trade dispute. If the legislature had intended to limit the provisions of the section to causes touching and concerning immovable property and rights pertaining thereto or other forms of specific property and rights thereover, they could and presumably would have provided accordingly; or if it had intended the provision merely to have a procedural significance enabling property of all sorts in the hands of trustees to be attached they could and presumably would have provided accordingly. (The latter intention is most improbable in view of section 24 (4)).

It has been suggested, in argument, that the enactment is in *pari materia* with the Trade Union Act, 1871 as amended by the Trade Disputes Act, 1906 and such being the case the decision of the House of Lords in *Vacher & Sons Ltd. v. London Society of Compositors*[6] should be made in some way to apply. Supposing it to be true that the two bodies of legislation are sufficiently in *pari materia* to permit of comparison, (I do not decide the point though I am inclined to think it is so), there is still a difficulty in the way of adopting this argument. The decision of Kennedy L.J. approved by the majority of the Law Lords in *Vacher's* case is completely convincing in the circumstances of the case before him; and it is true that the respondents were not the trustees. Nevertheless, the *ratio decidendi* of the decision was that the terms of section 4(2) of the 1906 Act were designed to lay the trustees open to actions for tort in respect of trust property in their hands, except in the one instance cited. As Lord Atkinson put it in *Vacher's* case in the House of Lords, *supra*, at page 124:

"A proceeding against the trustees under section 9 of the Act of 1871 is in fact, if not in form, a proceeding in *rem* against the property of the trade union. In that sense it is an action against the union itself. Judgments for damages against a trade union for torts committed by its agent, in whatever form the action might be brought, can only be satisfied out of the property vested in the trustees; and it was, I think, apprehended by the Legislature that the wide and positive provisions of subsection 1 might be taken as practically repealing in part section 9 of the Act of 1871, and thereby conferring on the trustees immunity as absolute as that conferred upon the union."

That therefore was the *ratio decidendi*; it being supposed that the object of the sub-section was to lay the trustees open to such actions to the extent of trust property in their hands or such as should have been in their hands. That does not appear to be so with regard to section 21(2) of our enactment which is differently worded. There is no reference to trustees but only to a trade union or any officer thereof; thus, al-

though, of course, officers may find themselves at times acting in one sense as trustees and can, in fact, be appointed as trustees (see section 35(2)), the purpose of the sub-section cannot be presumed to have been the same. What the purpose indeed was it is idle to enquire. I say this on the basis of the opinion of Viscount Haldane, the Lord Chancellor himself quoted from his own judgment in *Vacher's* case, *supra*. That being so, an attempt must be made (and I have made the attempt) to construe the section as a whole without reference to any other decision.

In construing the section I have had in mind the *dictum* of Farwell L.J. quoted in *Vacher & Sons Ltd. vs. London Society of Compositors*:[18]

> "It is a well settled maxim of construction that Acts creating monopolies or granting privileges are to be construed strictly; and, whatever this may mean, it means at least that the rest of the public are not to be deprived of their rights to any greater extent than is absolutely necessary to give effect to the intent and meaning of the Act, and that, if any doubt or ambiguity exists, the rights of the public are to be preferred."

Although his was a minority opinion, I do not think this principle has been undermined.

It has been pointed out that if the views for which Mr. Devasar contended are right, the effect of the amendment of our law in 1948 was nugatory. That may be so. It has also been pointed out, if his view is right, the words "touching and concerning the property and rights" are otiose in the context in which they appear. That may also possibly be so. Indeed, unless they are given the very special meaning attributed to them by Miss Lim, or to be more precise, unless the word "property" is given the special meaning attributed to it, which is also the meaning (if I understand the judgment correctly) attributed to it by Slade J. in *Longdon-Griffiths v. Smith*[19] the phrase has a meaning so wide in its connotation as to be perfectly valueless in attempting to construe the section. If one substituted "rights and liabilities" (which are correlative terms) for "rights" nothing has been left out (unless it be the union's fears and aspirations) and since rights and liabilities are complementary, (in this connection note that the chapter (Chapter IV) is headed "Rights and Liabilities of Trade Unions" and the marginal note to the section is "liability in tort") it is difficult to say whether any meaning whatsoever can be attached to the phrase taken as a whole. Catholicity and comprehensiveness in terminology may be so all-embracing as to be vacuous. Perhaps, in its context, it is a phrase without meaning. If it has a meaning, and if that meaning is to be restricted to a term of art, then one can only arrive at such meaning by employing methods which have been disapproved of by the highest authority. It may, in fact, have been borrowed (and mangled in the process) from section 9 of the 1871 Act: but that helps us little.

I conclude that the term "touching or concerning" may, in the course of many years, have acquired a special significance in England (see *Spencer's Case*[20] where the phrase is used in contra-distinction to something which is merely collateral to the thing demised); but it has not yet become a term of art in this country and, indeed, has no special significance here. In England the phrase would appear to have become firmly embodied in the law of Real Property, see e.g. *Fleetwood v. Hull*,[21] at p. 37 where Charles J. said:

> "The first question, therefore, which I have to determine is, whether the covenant is one which runs with the land. Does it touch or concern the thing demised? Now the thing demised was a beerhouse, and, looking at the question apart from authority, I should be of opinion that the covenant does touch or concern the thing demised."

No explanation is given of the phrase: indeed, in relation to covenants said to run with the land, it needs no explanation. In relation to "property" in this country, however, it is obscure and problematical to a lawyer versed in both systems of law: to one versed only in the Malayan system of the law of property, such as it is, the words taken at their face value, present no difficulty though there may be obscurity about the motive for including them in their context.

The words would seem to have the widest implication. The right to publish a newspaper may seem but collateral to the ownership of the property in it; but I find authority for the proposition that "touching" has the widest implication in certain contexts, in the case of *Willesford v. Watson*,[22] (a case concerning the construction of a mining lease), for the phrase "touching the rights, duties and liabilities of either party in connection with the premises" was used. At p. 450, Selborne L.C. said *apropos* the possibility of something collateral to the lease being in existence affecting mining operations on the land:

> ".....I cannot but think that these words, 'or touching the rights, duties and liabilities of either party in connection with the premises,' would perfectly authorize the arbitrator, indeed, would make it his duty, to take all those matters into account, in order to see what were the mutual rights and liabilities of the parties in respect of the demised property at the time when the question arose."

"Touch" is simply defined in the Imperial Dictionary of the English Language taking it as transitive verb and in the context marked "6" 'to relate to: to concern' — "The quarrel toucheth none more but thee alone" seems a particularly apt context; and I have no doubt that (in one sense) this quarrel toucheth upon the newspaper owned by the union and the union's rights to publish defamatory matter therein.

As Best, L.J. said in *Drennan v. Beechey & Ors., Trustees of the Transport and General Workers' Union and Magill*[23]:

> " It appears to me that inasmuch as the newspaper was the medium by which the libel was circulated, the property of the union, i.e., the newspaper, was as directly concerned in the action as a motor car belonging to the union and vested in the trustees would have been concerned if an action claiming damages for its negligent management had been brought against the trustees."

Sic utere tuo ut alienum non laedas.

The learned editor of *Broom's Legal Maxims*, 10th ed. (p. 238 *et seq*) makes it plain that this maxim has been regarded by the Courts as applicable not only to the use of real but to the use of personal property. I agree. Take e.g. the case of *Dixon v. Bell.*[24] There the defendant sent his young mulatto servant girl to fetch a gun loaded, oddly enough, with printer's type. Believing it to be unloaded she pointed it at the face of the plaintiff's small boy saying she would shoot him and pulled the trigger. It went off causing him injury. Here the maxim would appear to have been held to have been applicable. If in the context of this enactment, on the view I have taken, the union's pistol be used in a similar manner whether loaded with printer's type or some other form of ammunition and through negligence it causes injuries, it is only necessary to show that it was used, by or on behalf of the union, in furtherance of a trade dispute, to avoid the consequences of its liability in tort; otherwise the usual consequences follow. So with the newspaper.

And the learned editors have also referred at p. 254 to the maxim as giving rise to mischievous anomalies: I have tried to guard against these. Upon my view of the matter then, it would well repay union's to keep dogs known to be ferocious provided they are careful to ensure they are used only in furtherance of a trade dispute; upon the contrary view the position is worse as there would then be no exception whatsoever. Immunity is complete. This intention surely has not been clearly expressed by the legislature.

I construe the words "or rights" therefore as "or rights *qua* Trade Union" which includes the right to publish (or indeed print and publish) defamatory matter. This right *qua* Trade Union to publish defamatory matter is in my judgment, limited in the way provided for in the sub-section. If it were not for the words "or rights" which, be it noted, are not followed by the words "over property" (c/f section 9 of the 1871 Act), I would have been inclined to take the view that the phrase as a whole was synonymous with the phrase "affecting all property, movable or immovable and rights over such property". As it is, I find that I cannot give it that meaning: taken at its face value the phrase torn from its context has only one meaning. Taken in its context, however, it is difficult to give it any precise meaning for the reasons already stated.

In reaching my decision I am not overlooking, indeed I am attempting to apply, the judgment of the Lord Chancellor in the *Canada Sugar Refining Co. v. Reg.*[25] at p. 741 when he said:

> " Every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, so far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject matter."

To give any consistent meaning other than the above to the two sub-sections taken as a whole without discarding words which appear to be otiose is extremely difficult, if not impossible, unless one is to offend against the usual canons of construction. If the words are useless they may be discarded. *Utile per inutile non vitiatur.* But I have attempted to give the phrase some not completely unintelligible meaning in their context. The facts may well be that the legislature desired to introduce certain words taken from an English statute in order to comply with a request or a direction or to act upon the advice of the British Government of the day, and, in employing these "desirable" words, made verbal amendments to them with the intention of bringing the whole passage into line with the desired conditions whilst not impairing its true meaning and significance. It may be so. It may be, on the other hand, that the intention was to give the widest immunity to trade unions in the case of actions for tort even without the exception of the sole instance referred to above. This, however, for the reasons stated is idle speculation. In my judgment, if such was the intention then the legislature, in the event, failed to give effect to that intention.

I have expressed my views on the basis that, in fact, the application was properly heard summarily. However, the statutory limitation only applied to registered trade unions as to which nothing (as I have said) had been expressly pleaded. Thus, in my view, the point was not properly raised by way of an interlocutory application at that particular stage of the proceedings. It should have been expressly pleaded that this was a registered trade union, and the point dealt with at the trial.

I consider this appeal should be dismissed with costs here and below.

Appeal allowed.

Solicitors: *Sen & Lim; K. L. Devaser.*

S. SARAVANEMUTHU v. JULIANA NETTO

[A.C.J. (Shepherd J.) June 6, 1958]

[K.L. — Civil Appeal No. 4 of 1958]

Landlord and Tenant — Recovery of possession — Control of Rent Ordinance, 1956, s.12(1) (a) and (2) — "Such date" — Meaning of — Discretion.

This appeal was concerned with the meaning and effect of section 12(1) (a) of the Control of Rent Ordinance, 1956 when properly construed and with the question whether or not the learned Magistrate properly exercised the discretion reposed in him by subsection (2) of that section, or indeed exercised it at all by postponing his order for possession for 6 months from the date of the order.

Held: (1) "such date" is a relative term, but it is not plain in the context of subsection (1) to what other expression it refers. It means after the expiration of the last day of the period of 14 days; it is inclusive, therefore it means at the beginning of the 15th day of the period during which the rent lawfully due was in arrears;

(2) the Magistrate had consciously exercised the discretion reposed in him of staying or suspending execution for the maximum period of 6 months permitted by sub-section (2) of section 12.

CIVIL APPEAL.

Chan Hua Eng for the appellant.

K. L. Devaser for the respondent.

Cur. Adv. Vult.

Shepherd J.: — The only points of importance arising out of this appeal are as to the meaning and effect of section 12(1)(a) of the Control of Rent Ordinance, 1956 when properly construed; and as to the question whether or not the learned Magistrate properly exercised the discretion reposed in him by sub-section (2) of that section; or indeed exercised it at all. Section 12(1)(a) reads:

> " No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely —
>
> (a) where rent lawfully due has been in arrear for fourteen days or upwards:
>
> Provided that rent shall not be deemed to be in arrear if the tenant proves that it was tendered before such date";

"such date" is a relative term; but it is not plain in the context to what other expression it refers. In my view it means after the expiration of the last day of the period of 14 days; it is inclusive; that is to say, therefore, it means at the beginning of the 15th day of the period during which the rent lawfully due was in arrears.

As to the second point, it was suggested that the learned Magistrate in postponing his order for possession for six months from the date of the order had regard simply to the desire of the present appellant to appeal and so to give him ample time. I am bound by the record and although there was nothing in the grounds of judgment to the effect that the learned Magistrate had consciously exercised his discretion, clearly his attention was drawn to it and upon the basis of the maxim *omnia praesumuntur rite et solemniter esse acta*, I must conclude that he consciously exercised the discretion reposed in him of staying or suspending (the meaning is the same) execution of his order or postponing the date of possession (which is how he expresses the matter in his order) for the maximum period of 6 months permitted by sub-section (2). There is nothing on the record to lead me to suppose that he was wrong in the view he took of the proper way to exercise his discretion. Upon the facts as he found them, the rent was tendered (and refused) on the 15th day after it became due and having regard to the fact that it was a "near thing", in the sense in which I have used the phrase in my unreported judgment in Ipoh Civil Appeal No.1/1957, *S. N. Nachiappa Chettiar v. E. Gulam Kader*, it would seem that he exercised his discretion properly. That being so, I see no reason why I should interfere with his decision. The sub-section permits the Court, that is to say, the Magistrate, if he thinks fit, to discharge or rescind his order at any time provided that the condition contained therein (viz., the rental of $50 a month to be paid until the date of recovery) is complied with; and as I made an order extending the period of 6 months by a further period of one month in the